

Message Text

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ACTION EUR-12

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R 131703Z SEP 77
FM AMEMBASSY PARIS
TO SECSTATE WASHDC 8523
INFO AMCONSUL BORDEAUX
AMCONSUL LYON
AMCONSUL MARSEILLE
AMCONSUL NICE
AMCONSUL STRASBOURG

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E.O. 11652: N/A
TAGS: ECON FR US
SUBJECT: STATUS OF AMERICAN LAW FIRMS IN FRANCE

REF: PARIS 21918

1. DURING THE COURSE OF A COURTESY CALL ON THE MINISTER OF JUSTICE, ALAIN PEYREFITTE, ON AUGUST 30, THE AMBASSADOR RAISED THE PROBLEMS AMERICAN LAWYERS ARE FACING IN FRANCE. WHILE THE MINISTER WAS NOT FAMILIAR WITH THE SUBJECT HE WAS OF THE GENERAL OPINION THAT MUTUAL PRACTICE OF LAW ON BOTH SIDES OF THE ATLANTIC BY NATIONALS OF FRANCE AND THE UNITED STATES WOULD BE A DESIRABLE THING. HE SAID THAT HE WOULD SPEAK TO HIS MINISTRY'S EXPERT ON THE SUBJECT, JACQUES LEMONTEY, CONSEILLER TECHNIQUE, AND SUGGESTED THAT THE EMBASSY CONDUCT FOLLOW-UP CONVERSATIONS WITH THE LATTER WITHIN A FEW DAYS.

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2. ON SEPTEMBER 7 THE ACTING DEPUTY CHIEF OF MISSION AND THE CONSUL GENERAL CALLED ON LEMONTEY WHO HAD TWO ASSISTANTS WITH HIM. THE EMBASSY REPRESENTATIVES COMMENCED BY OUTLINING THE PROBLEMS FACING AMERICAN LAWYERS AS DESCRIBED IN REFTEL. LEMONTEY THEN FURNISHED SOME BACKGROUND INFORMATION ON THE 1971 LAW (LAW NO. 71-30 OF 31 DECEMBER 1971). HE POINTED OUT THAT AT

THE TIME THE LAW WAS ENACTED THE GOVERNMENT HAD WISHED TO ACHIEVE IMPORTANT REFORMS IN THE PRACTICE OF LAW IN FRANCE, AND IN PARTICULAR TO TRY TO CONSOLIDATE AND RATIONALIZE SOME OF THE VARIOUS SPECIALTIES SUCH AS ADVOCAT, AVOUE, NOTAIRE AND CONSEIL JURIDIQUE. HOWEVER WHAT HE DESCRIVED AS THE "FIERCE HOSTILITY" OF THE BAR ASSOCIATION MADE IT IMPOSSIBLE TO ACHIEVE THE KIND OF REFORM THE GOVERNMENT WANTED, AND CONSEQUENTLY THE LAW AS FINALLY ENACTED TURNED OUT TO BE A COMPLICATED COMPROMISE.

3. LEMONTEY THEN TURNED TO ARTICLE 55 OF THE 1971 LAW REGARDING RECIPROCITY. HE STATED THAT THIS ARTICLE WAS VERY DIFFICULT TO DEAL WITH POLITICALLY BECAUSE OF THE STRONG FEELINGS HELD BY THE BAR ASSOCIATIONS AND PARTICULARLY THE PARIS ONE WHICH GROUPED TOGETHER 5,000 LAWYERS, OR HALF THE LEGAL PROFESSION IN FRANCE. HE EXPLAINED THAT FOR SOME TIME NOW THE JUSTICE MINISTRY HAD BEEN IN AN EMBATTLED POSITION WITH THE BAR ASSOCIATIONS WHICH HAVE BEEN PRESSING FOR ALL SORTS OF MATERIAL ADVANTAGES RANGING FROM TAXES TO RETIREMENT BENEFITS. HE ADDED THAT ALTHOUGH THERE WAS NO CENTRALIZED BAR ASSOCIATION IN FRANCE THERE WAS A CONSIDERABLE DEGREE OF UNITY AMONG THEM VIS-A-VIS THE GOVERNMENT. FOR THIS REASON MR. LEMONTEY CONSIDERED IT POLITICALLY IMPOSSIBLE, ESPECIALLY WITH ELECTIONS APPROACHING, TO ACHIEVE ANY LIMITED OFFICIAL USE

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LEGISLATIVE CHANGES WHICH MIGHT MODIFY ARTICLE 55, CONSIDERING ALSO THAT THERE ARE MANY PROMINENT LAWYERS IN THE NATIONAL ASSEMBLY AND THE LEGISLATION WOULD HAVE TO BE REPORTED OUT BY THE JUDICIARY COMMITTEE, WHICH IS DOMINATED BY THEM.

4. WITH FURTHER REFERENCE TO THE ISSUE OF RECIPROCITY, LEMONTEY SAID THAT THE MINISTRY HAD LOTS OF EXCHANGES WITH U.S. LAWYERS AND WAS WELL AWARE OF THE VARIOUS MEASURES WHICH HAD BEEN TAKEN IN NEW YORK STATE AND ELSEWHERE TOWARDS ACHIEVING RECIPROCITY AND OF THE SUPREME COURT DECISION IN THE GRIFFITHS CASE. HOWEVER, HE GAVE IT AS HIS OPINION THAT FULL RECIPROCITY DID NOT EXIST. THE EMBASSY REPRESENTATIVES POINTED OUT THAT WHILE THERE WAS NOT EXACT EQUIVALENCE BECAUSE OF THE DIFFERENCE IN THE TWO LEGAL SYSTEMS, THE NEW YORK STATE LAW FOR EXAMPLE DID GIVE FRENCH LAWYERS CERTAIN ADVANTAGES BEYOND THOSE WHICH AMERICAN LAWYERS HAVE ENJOYED IN FRANCE, EVEN THOUGH IN OTHER RESPECTS THE FRENCH LAW MIGHT BE MORE ADVANTAGEOUS. LEMONTEY AGREED BUT POINTED OUT THAT ARTICLE 55 STATED CATEGORICALLY THAT IN ORDER FOR RECIPROCITY TO EXIST IT MUST EXIST "WITHOUT RESTRI-

CTION". UNDER THESE CIRCUMSTANCES HE BELIEVED THAT EQUIVALENCE WOULD NOT MEET THE REQUIREMENTS

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OF THE LAW.

5. LEMONTEY THEN PROPOSED AN ALTERNATIVE SOLUTION, SAYING THAT THE PROBLEM HAD TO BE DEALT WITH ON AN INTERNATIONAL BASIS. REFERRING TO THE ESTABLISHMENT CONVENTION, HE MENTIONED THAT AN ANCILLARY AGREEMENT WAS UNDER DISCUSSION BETWEEN FRANCE AND THE UNITED STATES ON THE SUBJECT OF THE EXECUTION OF FOREIGN JUDGMENTS, PARTICULARLY IN DIVORCE AND CHILD CUSTODY CASES (THE EMBASSY REPRESENTATIVE WERE NOT AWARE OF THESE DISCUSSIONS). LEMONTEY SUGGESTED A SIMILAR PROCEDURE WITH RESPECT TO THE EXERCISE OF THE LEGAL PROFESSION BY LAWYERS OF EACH OF THE TWO COUNTRIES ON THE TERRITORY OF THE OTHER. HE SAID THAT HIS MINISTRY INTENDED TO PROPOSE TO THE FRENCH FOREIGN OFFICE IN THE NEAR FUTURE THAT SUCH A CONVENTION BE NEGOTIATED BETWEEN THE UNITED STATES AND FRANCE IN THE SAME MANNER AS THE ONE ON THE

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EXECUTION OF FOREIGN JUDGMENTS. HE POINTED OUT THAT IT WOULD BE MUCH EASIER FOR THE FRENCH GOVERNMENT TO GET A TREATY THROUGH THE LEGISLATURE THAN A LAW, IN PARTICULAR BECAUSE IT WOULD BE REPORTED OUT BY THE FOREIGN AFFAIRS COMMITTEE RATHER THAN JUDICIARY COMMITTEE. HE ASKED THE EMBASSY REPRESENTATIVES WHETHER ANY PROBLEMS MIGHT EXIST WITH RESPECT TO SUCH A TREATY BECAUSE OF OUR FEDERAL SYSTEM, THAT IS WHETHER IT WOULD BE CONSTITUTIONALLY POSSIBLE FOR THE FEDERAL GOVERNMENT TO NEGOTIATE AND RATIFY A TREATY GOVERNING THE EXERCISE OF PROFESSIONS BY FOREIGN LAWYERS IN THE VARIOUS STATES. THE EMBASSY REPRESENTATIVES REPLIED THAT THIS MIGHT CAUSE US CONSIDERABLE PROBLEMS, BUT THAT THEY WOULD HAVE TO LOOK INTO THE MATTER FURTHER.

6. WHEN ASKED WHAT THE POSITION OF THE AMERICAN LAWYERS WOULD BE DURING THE NEGOTIATING PERIOD IF SUCH A TREATY WERE IN FACT TO BE NEGOTIATED, LEMONTEY SAID THAT ESSENTIALLY THE STATUS QUO WOULD BE MAINTAINED, IMPLYING BUT NOT SPECIFICALLY STATING THAT THE GOVERNMENT WOULD NOT ISSUE A DECREE LIMITING THE PRACTICE OF LAW BY AMERICAN FIRMS IN FRANCE. HE ADDED THAT "SOME MINOR ADJUSTMENTS" MIGHT BE MADE, BUT HE DID NOT ELABORATE FURTHER, OTHER THAN TO REAFFIRM THAT THEY WOULD BE REALLY MINOR CHANGES WHICH WOULD BE OF LITTLE CONCERN TO AMERICAN LAW FIRMS IN FRANCE. HE REFERRED TO THE 18-MONTH APPRENTICESHIP PROVISION IN PASSING, BUT WITHOUT SAYING WHETHER OR NOT THE GOVERNMENT WOULD ENFORCE IT. THE EMBASSY REPRESENTATIVES DID NOT PRESS HIM ON THIS POINT, LEST HE BE FORCED TO TAKE A NEGATIVE POSITION.

7. ACTION REQUESTED: THE EMBASSY WOULD APPRECIATE HAVING THE DEPARTMENT'S VIEWS ON THE FEASIBILITY OF A

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TREATY ALONG THE LINE SUGGESTED BY LEMONTEY AND IN PARTICULAR WHETHER THERE WOULD BE ANY INSUPERABLE CONSTITUTIONAL IMPEDIMENT DERIVING FROM FEDERAL-STATE RELATIONSHIPS. WE WOULD ALSO BE INTERESTED IN HAVING ANY INFORMATION THE DEPARTMENT MAY HAVE ON THE DISCUSSIONS WHICH ARE SUPPOSED TO BE TAKING PLACE ON A FRANCO-AMERICAN CONVENTION RE THE ENFORCEMENT OF FOREIGN JUDGMENTS.

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